
SENATE BILL No. 288

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-6-6; IC 3-11; IC 3-11.5-4; IC 3-12-4.

Synopsis: Various election matters. Requires the polls in each precinct to close at 9 p.m. rather than 6 p.m. on election day. Provides that the time at which half-day precinct election officers change is 1:30 p.m. rather than noon on election day. Allows the county election board to count during its canvass absentee ballots that are: (1) received after noon and before the time the polls close on election day; or (2) overlooked by a precinct election board. Makes conforming amendments.

Effective: January 1, 2009.

Breaux

January 10, 2008, read first time and referred to Committee on Local Government and Elections.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 288

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-6-6-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2009]: **Sec. 0.5. As used in this chapter, "mid election**
4 **day" refers to 1:30 p.m. on election day.**

5 SECTION 2. IC 3-6-6-10 IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JANUARY 1, 2009]: Sec. 10. (a) A county chairman
7 may make nominations for precinct election offices by filing the
8 nominations in writing with the circuit court clerk not later than noon
9 twenty-one (21) days before the election.

10 (b) This subsection does not apply to the office of precinct
11 inspector. A county chairman may specify in the nomination of an
12 individual for a precinct election office that the individual is nominated
13 to serve until ~~noon on~~ **mid** election day and that another individual is
14 nominated to serve in the same precinct election office beginning at
15 ~~noon on~~ **mid** election day until the expiration of the term of the office
16 under section 37(b) of this chapter.

17 SECTION 3. IC 3-6-6-11 IS AMENDED TO READ AS FOLLOWS



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[EFFECTIVE JANUARY 1, 2009]: Sec. 11. (a) A county election board shall appoint the individuals who are nominated for precinct election offices by the county chairmen if the individuals are otherwise eligible under this chapter to serve in the precinct election offices for which they are nominated.

(b) This subsection does not apply to the office of precinct inspector. This subsection applies to an appointment to a precinct election office made following a nomination by a county chairman under this chapter. The county election board shall provide that an appointment of an individual to a precinct election office:

(1) expires at ~~noon on~~ **mid** election day; or

(2) begins at ~~noon on~~ **mid** election day and expires under section 37(b) of this chapter;

if the nomination made by the county chairman specifies that the nomination is made for a term that begins or expires at those times.

(c) This subsection does not apply to the office of precinct inspector. This subsection applies to an appointment to a precinct election office made by a county election board under section 13(b) of this chapter. The county election board may appoint an individual to a precinct election office for a term that:

(1) expires at ~~noon on~~ **mid** election day; or

(2) begins at ~~noon on~~ **mid** election day and expires under section 37(b) of this chapter.

SECTION 4. IC 3-11-4-18, AS AMENDED BY P.L.164-2006, SECTION 93, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 18. (a) If a voter satisfies any of the qualifications described in IC 3-11-10-24 that entitle a voter to cast an absentee ballot by mail, the county election board shall, at the request of the voter, mail the official ballot, postage fully prepaid, to the voter at the address stated in the application.

(b) If the county election board mails an absentee ballot to a voter required to file additional documentation with the county voter registration office before voting by absentee ballot under this chapter, the board shall include a notice to the voter in the envelope mailed to the voter under section 20 of this chapter. The notice must inform the voter that the voter must file the additional documentation required under IC 3-7-33-4.5 with the county voter registration office not later than noon on election day for the absentee ballot to be counted as an absentee ballot, and that, if the documentation required under IC 3-7-33-4.5 is filed after noon and before ~~6 p.m.~~ **the time the polls are required to close** on election day **under IC 3-11-8-8**, the ballot will be processed as a provisional ballot. The commission shall

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prescribe the form of this notice under IC 3-5-4-8.

(c) Except as provided in section 18.5 of this chapter, the ballot shall be mailed:

- (1) on the day of the receipt of the voter's application; or
- (2) not more than five (5) days after the date of delivery of the ballots under section 15 of this chapter;

whichever is later.

(d) In addition to the ballot mailed under subsection (c), the county election board shall mail a special absentee ballot for overseas voters.

(e) Except as provided in section 18.5 of this chapter, the ballot described in subsection (d):

(1) must be mailed:

(A) on the day of the receipt of the voter's application; or

(B) not more than five (5) days after the latest date for delivery of the ballots under section 13(b) of this chapter applicable to that election;

whichever is later; and

(2) may not be mailed after the absentee ballots described by section 13(a) of this chapter have been delivered to the circuit court clerk or the clerk's authorized deputy.

(f) As required by 42 U.S.C. 15481, an election board shall establish a voter education program (specific to a paper ballot or optical scan ballot card provided as an absentee ballot under this chapter) to notify a voter of the effect of casting multiple votes for a single office.

(g) As provided by 42 U.S.C. 15481, when an absentee ballot is mailed under this section, the mailing must include:

- (1) information concerning the effect of casting multiple votes for an office; and
- (2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

SECTION 5. IC 3-11-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 8. The polls in each precinct open at 6 a.m. and close at ~~6 p.m.~~ **9 p.m.** on election day.

SECTION 6. IC 3-11-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 3. **(a)** A county election board must ~~receive~~ **deliver** an absentee ballot ~~in time for the board to deliver the ballot received not later than noon on election day~~ to the precinct election board of the voter's precinct before the closing of the polls on election day.

(b) A county election board must hold for counting during the canvass conducted under IC 3-12-4 an absentee ballot received after noon and before the time the polls are required to close on

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election day under IC 3-11-8-8.

SECTION 7. IC 3-11-10-11, AS AMENDED BY P.L.221-2005, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 11. (a) On election day each circuit court clerk (or an agent of the clerk) shall visit the appropriate post office to accept delivery of absentee envelopes at the latest possible time that will permit delivery of the ballots to the ~~appropriate precinct county election boards~~ **board** before ~~6 p.m.~~ **the time the polls are required to close on election day under IC 3-11-8-8.**

(b) Not later than noon on election day, the county voter registration office shall visit the appropriate post office to accept delivery of mail containing documentation submitted by a voter to comply with IC 3-7-33-4.5. The office shall immediately notify the county election board regarding the filing of this documentation to permit the board to provide certification of this filing to the appropriate precinct election boards before ~~6 p.m.~~ **the time the polls are required to close on election day under IC 3-11-8-8.**

SECTION 8. IC 3-11-10-24, AS AMENDED BY P.L.103-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 24. (a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

- (1) The voter has a specific, reasonable expectation of being absent from the county on election day during the entire ~~twelve~~ **(+2) hours time** that the polls are open.
- (2) The voter will be absent from the precinct of the voter's residence on election day because of service as:
 - (A) a precinct election officer under IC 3-6-6;
 - (B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;
 - (C) a challenger or pollbook holder under IC 3-6-7; or
 - (D) a person employed by an election board to administer the election for which the absentee ballot is requested.
- (3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury during the entire ~~twelve~~ **(+2) hours time** that the polls are open.
- (4) The voter is a voter with disabilities.
- (5) The voter is an elderly voter.
- (6) The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury during the entire ~~twelve~~ **(+2) hours time** that the polls are open.
- (7) The voter is scheduled to work at the person's regular place of

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employment during the entire ~~twelve (12)~~ hours time that the polls are open.

(8) The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(9) The voter is prevented from voting due to observance of a religious discipline or religious holiday during the entire ~~twelve (12)~~ hours time that the polls are open.

(10) The voter is an address confidentiality program participant (as defined in IC 5-26.5-1-6).

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) If a voter receives an absentee ballot by mail, the voter shall personally mark the ballot in secret and seal the marked ballot inside the envelope provided by the county election board for that purpose.

The voter shall:

(1) deposit the sealed envelope in the United States mail for delivery to the county election board; or

(2) authorize a member of the voter's household or the individual designated as the voter's attorney in fact to:

(A) deposit the sealed envelope in the United States mail; or

(B) deliver the sealed envelope in person to the county election board.

(d) If a member of the voter's household or the voter's attorney in fact delivers the sealed envelope containing a voter's absentee ballot to the county election board, the individual delivering the ballot shall complete an affidavit in a form prescribed by the commission. The affidavit must contain the following information:

(1) The name and residence address of the voter whose absentee ballot is being delivered.

(2) A statement of the full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the individual delivering the absentee ballot.

(3) A statement indicating whether the individual delivering the absentee ballot is a member of the voter's household or is the attorney in fact for the voter. If the individual is the attorney in fact for the voter, the individual must attach a copy of the power of attorney for the voter, unless a copy of this document has already been filed with the county election board.

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(4) The date and location at which the absentee ballot was delivered by the voter to the individual delivering the ballot to the county election board.

(5) A statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots.

(6) A statement that the individual delivering the absentee ballot is executing the affidavit under the penalties of perjury.

(7) A statement setting forth the penalties for perjury.

(e) The county election board shall record the date and time that the affidavit under subsection (d) was filed with the board.

(f) After a voter has mailed or delivered an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

(1) section 1.5 of this chapter; or

(2) section 33 of this chapter.

SECTION 9. IC 3-11-14-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 19. Each county election board shall be at its office from 5 a.m. until ~~6 p.m.~~ **the time the polls are required to close** on election day **under IC 3-11-8-8**. Upon notice that an electronic voting system is out of order or fails to work, the board shall be ready between those hours to deliver to any precinct in the county:

(1) necessary paper ballots;

(2) election booths with an adequate number of stalls;

(3) ballot boxes; and

(4) all necessary supplies and equipment as required by law.

SECTION 10. IC 3-11.5-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 3. A county election board must receive an absentee ballot before ~~noon~~ **the time the polls are required to close** on election day **under IC 3-11-8-8**.

SECTION 11. IC 3-11.5-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 7. ~~Not later than noon on election day~~ Each circuit court clerk, or an agent of the clerk, shall visit the appropriate post office to accept delivery of absentee envelopes **at the latest possible time that will permit the delivery of the ballots to the county election board before the time the polls are required to close on election day under IC 3-11-8-8**.

SECTION 12. IC 3-11.5-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 8. **(a) This section applies to absentee ballots received by a county election board not later than noon on election day.**

~~(a)~~ **(b)** Each county election board shall certify the names of voters:

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(1) to whom absentee ballots were sent or who marked ballots in person; and

(2) whose ballots have been received by the board under this chapter;

after the certification under section 1 of this chapter and not later than noon on election day.

(c) The county election board shall have:

(1) the certificates described in subsection (a); (b); and

(2) the circuit court clerk's certificates for voters who have registered and voted under IC 3-7-36-14;

delivered to the precinct election boards at their respective polls on election day by couriers appointed under section 22 of this chapter.

(d) The certificates shall be delivered not later than 3 p.m. on election day.

SECTION 13. IC 3-11.5-4-10, AS AMENDED BY P.L.198-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 10. Subject to section 7 of this chapter, absentee ballots received by mail (or by fax or electronic mail under IC 3-11-4-6) after noon the time the polls are required to close on election day under IC 3-11-8-8 are considered as arriving too late and may not be counted.

SECTION 14. IC 3-11.5-4-13, AS AMENDED BY P.L.198-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 13. (a) If the absentee ballot counters find under section 11 of this chapter that any of the following applies, the ballots shall be rejected:

(1) The affidavit is insufficient or that the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the office of the clerk of the circuit court under IC 3-11-4-19 or IC 3-11-10-27;

(B) the two (2) members of the absentee voter board visiting the voter under IC 3-11-10-25; or

(C) the two (2) appointed members of the county election board or their designated representatives under IC 3-11-4-19.

(2) The signatures do not correspond or there is no signature.

(3) The absentee voter is not a qualified voter in the precinct.

(4) The absentee voter has voted in person at the election.

(5) The absentee voter has not registered.

(6) The ballot is open or has been opened and resealed. This subdivision does not permit an absentee ballot transmitted by fax or electronic mail under IC 3-11-4-6 to be rejected because the

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ballot was sealed in the absentee ballot envelope by the individual designated by the circuit court to receive absentee ballots transmitted by fax or electronic mail.

(7) The ballot envelope contains more than one (1) ballot of any kind for the same office or public question.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications and the political party with which the voter intends to affiliate.

(9) The ballot has been challenged and not supported.

(b) Subsection (c) applies whenever a voter with a disability is unable to make a signature:

(1) on an absentee ballot application that corresponds to the voter's signature in the records of the county voter registration office; or

(2) on an absentee ballot security envelope that corresponds with the voter's signature:

(A) in the records of the county voter registration office; or

(B) on the absentee ballot application.

(c) The voter may request that the voter's signature or mark be attested to by any of the following:

(1) The absentee voter board under section 22 of this chapter.

(2) A member of the voter's household.

(3) An individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for the absentee ballot counters to determine that a signature or mark complies with subsection (a)(2).

(e) If the absentee ballot counters are unable to agree on a finding described under this section or section 12 of this chapter, the county election board shall make the finding.

(f) The absentee ballot counters or county election board shall issue a certificate to a voter whose ballot has been rejected under this section if the voter appears in person before the board not later than ~~5 p.m.~~ **one (1) hour before the time the polls are required to close** on election day **under IC 3-11-8-8**. The certificate must state that the voter's absentee ballot has been rejected and that the voter may vote in person under section 21 of this chapter if otherwise qualified to vote.

SECTION 15. IC 3-11.5-4-29 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 29. (a) This section applies whenever a precinct election board discovers, after the preparation of the certificate required by section 28 of this chapter, an**

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unopened absentee ballot envelope containing an absentee ballot.

(b) The precinct election board shall deposit and securely seal the unopened absentee ballot envelope in an envelope on which the precinct election board shall write the words: "Overlooked absentee ballot". The precinct election board shall identify the precinct and the date of the election on the envelope containing the unopened absentee ballot envelope.

(c) The overlooked absentee ballots shall be returned to the same officer and in the same manner prescribed by this title for the return and preservation of official ballots cast and uncast for the election.

SECTION 16. IC 3-12-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) At ~~6 p.m.~~ **the time the polls are required to close** on each election day **under IC 3-11-8-8**, the county election board shall assemble in a room to:

(1) canvass the certificates, poll lists, and tally papers returned by each inspector in the county; ~~and to~~

(2) count absentee ballots as provided under section 8.5 of this chapter; and

(3) declare the results of the election as provided in this chapter.

(b) The canvassing must be performed in public under IC 5-14-1.5. However, the board may restrict access to parts of the room where election material is being handled or transported to safeguard the material.

(c) Except as provided in section 7 of this chapter, the county executive shall provide a room in the courthouse that contains adequate space to permit members of the public to witness the canvassing of votes.

SECTION 17. IC 3-12-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 8. The county election board shall:

(1) carefully examine and compare the certificates, poll lists, and tally sheets; ~~and~~

(2) count absentee ballots as provided under section 8.5 of this chapter; and

~~(2) (3)~~ aggregate and tabulate from the **absentee ballots counted under subdivision (2)** and papers entrusted to it the vote for the county and each political subdivision, as appropriate.

SECTION 18. IC 3-12-4-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 8.5. (a) This section applies to an absentee ballot:**

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(1) received by the county election board after noon on election day; or

(2) returned by a precinct election board as an overlooked absentee ballot under IC 3-11.5-4-29.

(b) The county election board shall count the absentee ballots:

(1) using the procedures; and

(2) following the requirements;

set forth in IC 3-11.5-4 for absentee ballots counted by a precinct election board.

SECTION 19. IC 3-12-4-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 13. After the county election board has tabulated the vote:

(1) the canvass sheets used by the board; and

(2) **the absentee ballots counted under section 8.5 of this chapter; and**

~~(2)~~ (3) the certificates, poll lists, and tally papers returned by each inspector in the county;

shall be delivered to the circuit court clerk. The clerk shall file and preserve all the material in the clerk's office as provided in IC 3-10-1-31 or IC 3-10-1-31.1.

SECTION 20. IC 3-12-4-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 16. If there is a disagreement between the members of a county election board as to how **an absentee ballot under section 8.5 of this chapter or** the vote of a precinct should be counted, the board shall:

(1) immediately report the matter in dispute to the judge of the circuit court; and

(2) provide the judge with a written brief stating the grounds of the disagreement and all papers concerning the matter.

SECTION 21. IC 3-12-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 17. The judge of the circuit court shall summarily determine a dispute presented under section 16 of this chapter and direct the county election board how to count **the absentee ballot or** the vote. The judge's determination is final with respect to the action of the board.

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